

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of the Relocation Benefits
Claim of Benz Auto

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on April 10, 2008, at the Office of Administrative Hearings, 600 Robert Street North, St. Paul, Minnesota. The OAH record closed on April 28, 2008, upon receipt of the parties' post-hearing memoranda.

Jon Morphew, Attorney at Law, Schnitker & Associates, P.A., 1330 81st Avenue NE, Spring Lake Park, MN 55432, represented Benz Auto (Claimant). Chad Alan Staul, Assistant City Attorney, Office of the City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, Minnesota 55102, represented the City of St. Paul (City).

This order is the final administrative decision.¹ Judicial review of this decision may be had by writ of certiorari to the Minnesota Court of Appeals.

STATEMENT OF ISSUES

1. Did the Claimant provide reasonable documentation of his ownership of personal property (a paint spray booth) located at the displacement site?

2. If so, what amount of relocation benefits is the Claimant entitled to receive for purchase of "substitute personal property" at the replacement site under the Minnesota Uniform Relocation Act and 49 C.F.R. § 24.301(g)(16)?

The Administrative Law Judge concludes that the Claimant failed to provide reasonable documentation that he owns the paint spray booth at the displacement site, and accordingly the claim for relocation benefits related to the purchase of a substitute spray booth at the replacement site must be denied.

Based upon all of the proceedings in this matter, the Administrative Law Judge makes the following:

¹Minn. Stat. § 117.52, subd. 4 (2006); Minn. Stat. § 14.62, subd. 4 (2006).

FINDINGS OF FACT

1. Rick Anderson is one of the owners of Ray Anderson & Sons Companies, Inc., a dumpster box services company. The company is located in a large building at 930 Duluth Street in St. Paul.² The company leases portions of its premises to a number of small businesses, three of which are automobile body shops.³

2. The first tenant in Section 8-B of the property, which has a street address of 933 Atlantic, was a company called P & R Auto Body. Twenty or more years ago, P & R Auto Body sought Mr. Anderson's permission to install a paint spray booth on the premises. Anderson granted permission to install the booth, with the understanding that the booth would have to remain in the space after installation, because the exhaust venting associated with the spray booth required a large hole to be cut through the roof of the building. This agreement was not specifically reduced to writing.⁴

3. The spray booth is essentially a large metal shed constructed inside the leased space. It is nine ft wide by 40 ft long by seven ft high, with a slanted roof. The interior has banks of fluorescent lights, two cross-draft filter columns, and six ceiling-mounted powder dispensing heads for the fire suppression system. At the south end of the roof of the booth is a large ventilation duct with a fan that exhausts paint fumes through the roof of the building. The air system for painting inside the booth consists of a hole in the wall through which an air hose is placed.⁵

4. When the owner of P & R Auto Body retired, Section 8-B was leased to TNT Auto Body. TNT Auto Body did not allow other tenants to use the spray booth, which caused the other tenants to complain to Ray Anderson & Sons. Rick Anderson was reluctant to become involved in these disputes; he preferred that tenants work these issues out for themselves.⁶

5. Mohammed (Adam) Zalloum is the owner of Benz Auto. His business involves buying used cars at auction, repairing them, and selling them to dealers and others for resale. He buys between three and 15 cars per week and has two employees who do the repair work necessary to sell the cars to others.⁷

6. On January 14, 2004, Benz Auto purchased certain equipment from TNT Auto Body for \$24,000.⁸ According to the Purchase Agreement, the

² The building has two other street addresses: 931 Atlantic and 933 Atlantic Street, St. Paul.

³ Testimony of Rick Anderson; Ex. C and attached floorplan (denoting different sections of leased space in the building).

⁴ Ex. D.

⁵ Ex. G.

⁶ Test. of R. Anderson.

⁷ Testimony of Adam Zalloum.

⁸ Ex. 5.

equipment to be purchased was listed on an attached Addendum A. The Claimant is unable to locate Addendum A.⁹

7. On January 15, 2004, Benz Auto executed a two-year lease with Rick Anderson for Section 8-B, the premises formerly occupied by TNT Auto Body.¹⁰ The lease is in the name of Adam Benz, d/b/a Benz Auto. The lease term was for the period from February 1, 2004, through February 1, 2006. The rent was \$21,000 per year, payable in monthly installments of \$1,750. Benz Auto moved into the premises on or about February 1, 2004.¹¹

8. Paragraph 3 of the lease provides, in relevant part, as follows:

By occupying the leased premises, Tenant shall be deemed to have accepted the same AS IS and to have acknowledged that the leased premises are in good and sanitary condition, and in good repair, and the equipment, plumbing, drains, fixtures, appliances and machinery therein, at the time of so taking possession, are in good, clean, sanitary and tenantable condition and in all respects satisfactory and acceptable to Tenant and in condition in which they were represented to Tenant to be and agreed to be put in by Landlord.¹²

9. Paragraph 4 of the lease provides in part:

The leased premises shall be used and occupied by Tenant for Auto Body purposes only and uses and purposes incidental thereto and for no other purpose.¹³

10. With regard to repair obligations, the lease provides in paragraph 7 that the Tenant “shall take good care of the leased premises and all improvements erected therein and shall keep the same in good order and condition[.]” Alterations and improvements to the property are prohibited by paragraph 9 without the written consent of the Landlord. With regard to surrender of possession, paragraph 16 of the lease provides in relevant part:

On or before the last day of the term or the sooner termination thereof, Tenant shall, at its expense, remove its trade fixtures, personal property and equipment and signs from the leased premises and any property not removed shall be considered abandoned. . . . All alterations, additions, improvements and fixtures (other than Tenant’s trade fixtures and equipment) which shall have been made or installed by either Landlord or Tenant

⁹ Testimony of Zalloum.

¹⁰ Ex. 6.

¹¹ Test. of Zalloum.

¹² Ex. 6.

¹³ *Id.*

upon the leased premises and all flooring shall, at the Landlord's option, remain upon and be surrendered with the leased premises as a part thereof, without disturbance, molestation or injury, and without charge, at the expiration or termination of this Lease.¹⁴

10. On April 15, 2004, the Claimant signed an additional lease term, which is attached to the previously executed document. The additional term provides as follows:

Part of Lease Agreement with Adam Benz

Adam Benz does agree to allow other body shops in the building to use the paint booth. Adam Benz and other body shops must agree on a price set year to year for the use of the booth. If any problem[,] Ray Anderson & Sons has the right to overtake the use of the paint booth and settle the dispute.¹⁵

11. During the term of the lease, the Claimant acted in accordance with the April 15, 2004, provision. He allowed the owners of other body shops in the building to use the paint spray booth. He set the price at approximately \$30 - \$50 per car, depending on the amount of paint needed. He controlled the use of the booth and retained all payments made by other renters.¹⁶

12. After the two-year lease expired in February 2006, Benz Auto remained in the space on a month-to-month basis.

13. At some point in late 2005 or early 2006, the City of St. Paul acquired an easement from Ray Anderson & Sons to install a bicycle path adjacent to the property. The bike path did not prohibit access to the premises leased by Benz Auto, but it did limit or reduce access to the space. The City consequently determined that Benz Auto was a displaced person eligible for relocation benefits. The City contracted with SRF Consulting Group, Inc., to review the claim for relocation benefits and to make a recommendation concerning payment of any benefits pursuant to the Uniform Relocation Act.¹⁷

14. The Claimant began looking for a new location. The search took approximately 16-18 months. In April 2007, he leased space at 3718 Chicago Avenue in Minneapolis. The Chicago Avenue premises previously had been used as an auto body repair shop. The Claimant signed a "Bill of Sale" on April 25, 2007, describing the purchase of the following items from the previous tenant, Hamza Refaya:

Paint Booth	\$55,000.00
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¹⁴ Ex. 6.

¹⁵ *Id.*

¹⁶ Test. of Zalloum.

¹⁷ Ex. 7.

Ai[r] compressor	\$4,800.00
Office	\$1,000.00
Tools	\$2,500.00
Total:	\$63,600.00 ¹⁸

15. The Claimant testified that the purchase price was paid with a combination of cash, money orders, and bartered vehicles (a 2003 Land Rover and 2001 BMW).¹⁹ The Claimant has receipts for \$13,800 in cash payments made to Refaya between April and August of 2007.²⁰ There are no receipts for money orders. The vehicles are not registered with the Department of Public Safety as being owned by Refaya, and Refaya did not testify at the hearing.²¹

16. The City does not dispute that the Claimant is the owner of the spray booth at 3718 Chicago Avenue in Minneapolis. The spray booth at that location is similar in make, age, and condition to the spray booth in St. Paul. The Chicago Avenue spray booth has a fair market value in continued use of approximately \$12,000 as of January 2008.²²

17. Benz Auto submitted a claim for relocation benefits that included \$10,000 in re-establishment expenses, \$2,500 for time spent searching for a new location for the business, \$7,372 in moving expenses, and \$55,000 for substitute personal property pertaining to the purchase of a new paint spray booth at the new location of Benz Auto.²³

18. Sometime in May 2007, the Claimant asked Rick Anderson for a letter that he could give to the City in connection with his claim for relocation benefits. Anderson obliged, and signed a letter dated May 30, 2007, providing that "Adam Benz (Benz Auto) owns the paint booth located [at] 930 Duluth St."²⁴

¹⁸ Ex. 2; Ex. 9.

¹⁹ Test. of Zalloum; Exs. 10 & 11. Exhibits 10 and 11 were not submitted to the City with the claim, but were produced for the first time when the parties exchanged exhibits before the hearing. The Certificate of Title (Ex. 10) for the Land Rover shows that Daimler Chrysler transferred ownership to A and K Auto on April 11, 2007; A & K Auto transferred ownership to Benz Auto on April 18, 2007; and Benz Auto transferred ownership to Mr. Refaya on April 25, 2007. The Certificate of Title (Ex. 11) for the BMW shows that Ford Motor Credit Co. transferred ownership to Automobile Giants on February 21, 2007; Automobile Giants transferred ownership to Benz Auto on March 2, 2007; and Benz Auto transferred ownership to Mr. Refaya on April 25, 2007.

²⁰ Ex. 12.

²¹ According to records maintained by the Department of Public Safety, the vehicles in question were still registered to Daimler Chrysler and Ford Motor Credit Company, respectively, at the time of the hearing. See Ex. F.

²² Ex. G.

²³ Ex. A.

²⁴ Ex. 3.

19. After providing the letter, one of Anderson's employees reminded him that Ray Anderson & Sons had become the owner of the spray booth many years previously, and Anderson reviewed the written lease with Benz Auto, and in particular, the clause regarding use of the paint booth signed by the Claimant on April 15, 2004. Anderson then recalled the agreement made with P & R Auto Body that the paint booth would have to remain on the premises after installation.²⁵

20. By letter dated June 12, 2007, Anderson informed the City that Ray Anderson & Sons Companies owned the paint booth and that he had made a mistake when he stated in his prior letter that Benz Auto owned the paint booth.²⁶

21. SRF Consulting Group reviewed the claim for relocation benefits and by letter dated June 21, 2007, recommended that the City pay the \$10,000 maximum benefit for re-establishment expenses, \$2,457.50 in time spent searching for a new location, and \$7,372 in moving expenses (after confirmation of removal of all of Benz's personal property). The consultant recommended that the City deny the substitute personal property claim for the spray booth on the basis that Benz Auto had not adequately documented either the cost of the substitute item or the proceeds of the sale or trade of the old spray booth, which are necessary steps. More importantly, the consultant recommended denial of the claim based on Ray Anderson's assertion that Ray Anderson & Sons owned the paint booth, which would make Benz Auto ineligible for any relocation expense related to the spray booth.²⁷

22. Although the Claimant may have moved his business to Chicago Avenue in April 2007, he remained a tenant in the St. Paul space until November 2007, when Anderson took action to have him evicted for nonpayment of the heating bill. One of the Claimant's employees formally took over the lease on January 1, 2008. It appears the current tenant at 933 Atlantic is using the spray booth in connection with his own auto body business.²⁸

23. The Claimant has taken no legal action against Anderson to assert ownership of the booth, nor has he taken any action to sell, trade, remove or scrap the booth for its salvage value.²⁹ The spray booth at 933 Atlantic has a fair market value in continued use of approximately \$11,000 as of January 2008.³⁰

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

²⁵ Test. R. Anderson.

²⁶ Ex. D.

²⁷ Ex. A.

²⁸ Test. R. Anderson.

²⁹ Test. of A. Zalloum and R. Anderson.

³⁰ Ex. G.

1. The Administrative Law Judge has jurisdiction to hear and decide this matter pursuant to Minn. Stat. § 117.52, subd. 4 (2006).

2. The Claimant received timely and appropriate notice of the hearing.

3. The purpose of the federal relocation assistance program is, in part, to insure that persons displaced as a direct result of federally assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.³¹

4. A tenant who is displaced from a business is entitled to payment of actual reasonable and necessary moving and related expenses.³²

5. If an item of personal property, which is used as part of a business operation is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of: (1) the cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or (2) the estimated cost to move and reinstall the replaced item.³³

6. Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses.³⁴

7. The Claimant has the burden of proof to demonstrate entitlement to relocation benefits.³⁵

8. The Claimant has failed to provide adequate documentation that he is the owner of the spray booth or that the City should be required to pay his claim for substitute personal property benefits.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the claim for \$55,000 in substitute personal property relocation benefits is DENIED.

Dated this 3rd day of June, 2008

³¹ 42 U.S.C. § 4621(b); 49 C.F.R. § 24.1(b).

³² 42 U.S.C. § 4622; 49 C.F.R. § 24.301(a)(1).

³³ 49 C.F.R. § 24.301(g)(16).

³⁴ 49 C.F.R. § 24.207(a).

³⁵ Minn. R. 1400.7300, subp. 5 (2007).

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally Recorded, no transcript prepared.

MEMORANDUM

The main issue in this case is whether the Claimant has adequately documented his ownership of the paint spray booth located at 933 Atlantic Street in St. Paul. For purposes of this proceeding, the Administrative Law Judge has accepted Rick Anderson's testimony that ownership of the spray booth reverted to his company when P & R Auto Body moved out of the space, in large part because Anderson's testimony is corroborated by the written terms of the lease between Anderson and the Claimant.³⁶ The main body of the lease contemplates that the leased premises may include equipment, fixtures, machinery, or improvements, in addition to the space itself. Although the lease term dated April 15, 2004, does not directly assert ownership by Anderson, it does require the Claimant to allow other tenants to use the spray booth, and it permits Anderson to "take over" the spray booth to resolve disputes among tenants. This lease term, which the Claimant undisputedly agreed to, is more consistent with Anderson's claim of ownership than with the Claimant's. In addition, the Claimant surrendered the premises (either when he moved or when he was evicted) without taking any action to sell, trade, remove, scrap, or otherwise dispose of the spray booth, which he would have to do to establish his eligibility for substitute personal property benefits. The Claimant's own actions are inconsistent with his claim of ownership.

The Claimant argues that the lease term dated April 15, 2004, should be disregarded because it was not a valid amendment to the lease. The issue here is not whether the April 15, 2004, lease term is valid or enforceable between Anderson and the Claimant as a matter of contract law. The issue here is what evidentiary value the term itself has concerning ownership of the spray booth. As noted above, the lease term does not directly address ownership of the booth, but it does require the Claimant to let other tenants use the booth, and it permits Anderson to overtake use of the booth in order to settle any disputes. The fact that the Claimant agreed to this term and acted in conformance with it is evidence that is inconsistent with the claim of ownership presented here.

Furthermore, the Administrative Law Judge has found credible Anderson's testimony that he had forgotten about this term when he wrote the initial May 30,

³⁶ The only issue decided here is that the Claimant has failed to adequately document his ownership interest in the spray booth for purposes of receiving relocation benefits. The Administrative Law Judge would have no authority to decide that title to the spray booth reverted to Anderson as a matter of law.

2007, letter to the City, and was reminded later by an employee of the true circumstances. Anderson appears to have paid relatively little attention to leasing issues, and he appears to have little interest in the details of lease obligations or disputes among his tenants.

The Claimant argues that Anderson's testimony lacks credibility because Anderson had a financial interest in keeping the spray booth on his premises. The Claimant contends that the real reason Anderson wrote the second letter to the City, dated June 12, 2007, is not because Anderson believes that his company actually owns the spray booth, but is because Anderson realized the financial harm that losing the spray booth would cause his company. The Claimant further argues that the Administrative Law Judge should focus on the May 30, 2007, letter and give that letter greater weight, because there was no financial incentive one way or the other for Anderson to provide that letter. This argument is internally inconsistent and lacks persuasive force. The Administrative Law Judge agrees that Anderson has a financial interest in claiming ownership of the spray booth, but that interest existed before he wrote the May 30, 2007, letter. If maintaining ownership of the spray booth was so financially important to him, it seems unlikely that Anderson would have written the May 30, 2007, letter at all. Anderson has explained the circumstances of his error, and as discussed above, the Administrative Law Judge has found his testimony to be both credible and consistent with the written documentation.

The Claimant also maintains that even without Addendum A to the purchase agreement with TNT Auto Body, his testimony, in conjunction with the Affidavit of Charles Tessier, dated June 28, 2007 (attached to his post-hearing memorandum) is sufficient evidence that he bought all assets of TNT Auto Body, including the spray booth. The Tessier Affidavit was neither offered nor received into evidence at the hearing, and it is not part of the evidentiary record in this case.³⁷ Because the Administrative Law Judge is obligated to base the decision in this matter only on evidence presented at the hearing, the Tessier Affidavit was not considered in reaching this decision. The agreement with TNT Auto Body references the purchase of specific equipment, which was to be identified in Addendum A. The Claimant cannot locate Addendum A or any other documentation that supports his claim of ownership. The only credible documentation that does exist is the written lease between the Claimant and Anderson, which suggests the Claimant does not own the spray booth. The MURA requires reasonable documentation that the Claimant is the owner of the personal property for which he has submitted a substitute personal property claim. The Claimant has failed to provide it, and his claim must accordingly be denied.

³⁷ See Minn. R. 1400.7100, subp. 2 (2007) & Minn. R. 1400.7300, subp. 2 (2007). In any event, the Affidavit suffers from the same deficiency as does the Claimant's evidence in the record: There is no documentation to support the claim of ownership.

Because the Administrative Law Judge has concluded the Claimant failed to adequately document his ownership of the spray booth, it is not necessary to address the second issue as to how much compensation he would be entitled to receive for substitute personal property. The Administrative Law Judge is compelled to note, however, that the documentation provided to support the alleged \$55,000 cost of the new spray booth is similarly insufficient. The Claimant has been in business for many years, he has two employees, he buys and sells many cars each week, and he has a bank and a line of credit for his business. The Administrative Law Judge believes the Claimant knows how to structure a transaction to establish what he actually paid for an asset, and he did not do so here despite the fact that he had a pending claim for relocation benefits. The documentation the Claimant provided of \$13,800 in cash payments, money orders lacking receipts, and bartered vehicles is insufficient, in light of the record as a whole, to show that the cost to purchase the spray booth in Minneapolis was \$55,000.

K.D.S.